In re DAVID R. CHERITON, Application No. 09/981,170
Amendment A

REMARKS

The Office action dated August 23, 2005, and the references cited have been fully considered. In response, please enter the following amendments and consider the following remarks. Reconsideration and/or further prosecution of the application is respectfully requested.

Applicant appreciates the Office returning the initialed, signed and dated 1449 indicating due consideration of the cited references.

All claims stand rejected under 35 USC § 102(e) or § 103(a) as being unpatentable over Shabtay et al., US Patent Application Publication 2002/120743. First Applicant expressly reserves the right to antedate this reference; however, Applicant believes all pending claims are allowable over all prior art of record after entering of this Amendment A.

The amendments to the claims will be discussed in terms of the claim sets. Note, claims 2, 6, 7, 8, 15, 18, 19, and 21 are canceled herein; and new claims 22-25 are added; and pending claims are amended as presented herein to consistently use the phrase "splice token" instead of splicer token" (e.g., as used on page 7, line 13 of the original disclosure).

- Independent claim 1 and its dependent claim 22. Claim 1 is amended to limitations recited in original claim 2, as well as to describe the meaning of the splice token request and the splice token response with support at least provided by pages 7-9 of the originally filed specification. Claim 5 is amended to consistently use the term "splice indication responses". New claim 22 is added to recite that the splice token response is sent in a separate packet, with support provided by at least at the top of page 8 of the originally filed disclosure. Claim 2 is canceled.
- Independent claim 4 and its dependent claims 5 and 23. Claim 4 is merely re-written in independent form, with claim 3 being cancelled. Claims 6-8 are also canceled as it is clear that the scope of the claims includes the limitations of these dependent claims, and the freed-up claim fees used to pay for the new claims added herein. Claim 23 is added to recite that the splice token response is sent in a separate packet,

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with support provided by at least at the top of page 8 of the originally filed disclosure.

- Independent claim 9 and its dependent claims 10-14 and 24. Claim 9 is amended to include a portion of original claim 10, and to recite a context/meaning/use of the splice token with support at least provided by pages 7-9 of the originally filed specification, and to remove the timing limitation of when the second request is received. Claim 10 is amended to correspondingly remove a limitation. Claim 11 is amended to recite a context/meaning/use of the splice token response with support at least provided by pages 7-9 of the originally filed specification. Claim 15 was a dependent Beauregard-style claim, which is cancelled with a corresponding Beauregard claim set of claims 25-31 being added. New claim 24 is added herein with support provided at least by the limitation removed from claim 9, as well as pages 7-9 of the originally filed specification.
- Independent claim 16. Independent claim 16 is amended to include the limitations of canceled dependent claim 17, as well as to recite a context/meaning/use of the splice token requests and responses with support at least provided by pages 7-9 of the originally filed specification.
- Independent claim 20. Independent claim 20 is merely re-written in independent form, with claim 19 being canceled.
- Canceled original independent claim 21. Claim 21 is canceled herein to free-up an additional independent claim fee.
- Independent claim 25 and its dependent claims 26-31. This claim set is a Beauregard-style claim set corresponding to claims 9-14 and 24 as presented in this amendment, with support provided by original claim 15 (a Beauregard-style dependent claim of independent claim 9) and pending claims 9-14 and 24.

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All claims stand rejected under 35 USC § 102(e) or § 103(a) as being unpatentable over Shabtay et al., US Patent Application Publication 2002/120743. Applicant has elected in this application to focus on the use of the splice token requests and responses, and thus these arguments are targeted towards the statement of the § 103 rejections.

First, Applicant agrees with the Office that Shabtay et al. fails to disclose the use of such tokens.

Next, although it is the Office's policy to give claims there broadest reasonable interpretation, a reasonable interpretation must be in the context of the specification when the words are define in the specification. MPEP § 2111.01. Applicant submits that the use of determining load by sending tokens to and from a server is inconsistent with the definition and use of the splice tokens, such as that presented on pages 7-9 of the original disclosure, including line 13 on page 7. Applicant respectfully submits that based on the clear definition in the specification, one skilled in the art would not have given it a meaning the same or similar to that presented in the Office action.

Additionally, Applicant respectfully traverse the presented § 103 extension of Shabtay et al., and Applicant makes a "demand for evidence" for art showing the Office's use of tokens in the manner presented in the Office action, and for that use in, and how to modify Shabtay et al., to use such load balancing tokens. Shabtay et al. neither needs such tokens as it knows the load based on its splicing of requests to servers.

However, these points are probably moot as all independent claims, except for claims 4 and 20, recite the meaning/use of splice tokens in a manner supported by the original disclosure which is patentably distinct from that presented in the Office action, and claims 4 and 20 already include a limitation different than that supported by such construction of tokens as presented in the Office action.

Therefore, Applicant respectfully requests the withdrawal of the rejections of claims 1, 9-14, 16, and 22-31 as Shabtay et al. neither teaches nor suggests the use of splice token requests, splice token responses, nor the timing limitations recited in the claims, which clearly

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recite these terms and the use thereof in a patentably distinct manner from the prior art of record and rejections presented in the Office action.

Applicant further requests that the rejections of independent claim 4 and its dependent claims 5 and 23, and independent claim 20 be withdrawn, at least for the reason that independent claims 4 and 20 recite the limitation of "said organizing the plurality of the responses includes referencing the plurality of splice indication responses." The Office agrees that Shabtay et al. fails to disclose the use of tokens, and traverses the extension of Shabtay et al. as already discussed. Even if the extension is proper, the Office's extension of Shabtay et al. to receive load responses from the servers (corresponding to the recited limitation of "splice indication responses") neither teaches nor suggests "organizing the plurality of the responses" as recited in the claims. Rather, the load responses would be used for directing the requests to the server, and not for organizing responses to be sent to the client.

In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over all prior art of record, and if the Office complies with MPEP § 706 and 37 CFR 1.104(c)(2), then the Office cited the best prior art references available. As the prior art of record neither teaches nor suggests all the claim limitations of the pending claims, then all pending claims are believed to be allowable over the best prior art available, and Applicant requests all rejections be withdrawn, the claims be allowed and the application pass to issuance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney, as Applicant is open to discussing, considering, and resolving issues.

Applicant hereby petitions/requests a one-month extension of time, with payment for such extension of time provided by the enclosed credit card payment form (PTO-2038). Moreover, the Commissioner is hereby generally authorized under 37 C.F.R. § 1.136(a)(3) to treat this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 requiring an extension of time as incorporating a request therefore,

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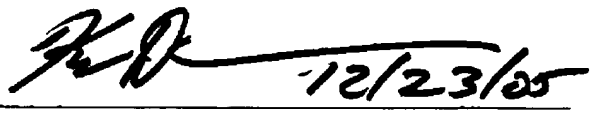
and the Commissioner is hereby specifically authorized to charge Deposit Account No. 501430 for any fee that may be due in connection with such a request for an extension of time. Moreover, the Commissioner is hereby authorized to charge payment of any fee due any under 37 C.F.R. §§ 1.16 and § 1.17 associated with this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 or credit any overpayment to Deposit Account No. 501430.

Respectfully submitted,
The Law Office of Kirk D. Williams

Date: December 23, 2005

By  12/23/05

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